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CONCORD, N.H.

August 25, 1955

Mr. Frank D. Merrill, Commissioner  
Department of Public Works and Highways  
State House Annex  
Concord, New Hampshire

Re: Newmarket - Apportionment B Funds

Dear General Merrill:

Under the facts as related in your communication of August 22, 1955, section 2, part 13, of chapter 90, of the Revised Laws as inserted by Laws of 1945, chapter 123, authorizing apportionment of highway funds to Newmarket for improvement of Class IV highways, subsequently implemented by contract dated September 2, 1954, between the town and state providing for construction of a bridge which is now completed and further providing that "The Department of Public Works and Highways will pay annually for a period of 6 1/2 years to the Town an amount equal to its apportionment 'B' as established by chapter 83, Laws of 1951 as amended by chapter 31, Laws of 1953 for payment of 50% of the Town's share of the above project and in consideration therefor the Town, . . . agrees to apply said funds to the payment of said project and to appropriate, raise and set aside matching funds as provided in said Chapter 83, Laws of 1951 as amended" creates a valid enforceable contract.

Chapter 333, Laws of 1955, removing Newmarket from the class of towns entitled to receive apportionment "B" funds validly affects the political rights of the town but does not abrogate the property rights to reimbursement from the highway fund which have vested through the contract. Amvot v. Caron, 88 N.H. 394. Accordingly the state is bound to reimburse the town under the contract. The measure of the state's liability is that sum each year during the life of the contract which is determined by inclusion of Class IV highways of the Town of Newmarket in the statewide Apportionment B allocation computations.

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Application of the 1955 Act to exclude this contract from such computations during the life of the contract would be contrary to the twenty-third article of the bill of rights of The New Hampshire Constitution in its retrospective operation. Society for Propagation of the Gospel v. Wheeler, Fed. Cas. No. 13156, 2 Gall. 105, Rich v. Flanders, 39 N.H. 304; Towle v. Eastern R. Co., 18 N.H. 547.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GFN:L

cc - Governor Lane Dwinell  
Planning